

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

_____)	
NEUROGRAFIX; NEUROGRAPHY)	
INSTITUTE MEDICAL ASSOCIATES,)	
INC.; and IMAGE-BASED)	
SURGICENTER CORPORATION,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 12-11276-RGS
)	
TRUSTEES OF BOSTON UNIVERSITY;)	
BOSTON MEDICAL CENTER)	
CORPORATION; BOSTON UNIVERSITY)	
AFFILIATED PHYSICIANS, INC; and)	
BOSTON UNIVERSITY MEDICAL)	
CENTER RADIOLOGISTS, INC.,)	
)	
Defendants.)	
_____)	

**APPENDIX OF AFFIDAVITS IN SUPPORT OF DEFENDANTS'
MOTION TO STAY THIS CASE PENDING
RESOLUTION OF RELATED MANUFACTURER CASES**

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Certificate of Service

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as unregistered participants on October 29, 2012.

/s/ David E. Cole

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**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

NEUROGRAFIX; NEUROGRAPHY
INSTITUTE MEDICAL ASSOCIATES,
INC; and IMAGE-BASED
SURGICENTER CORPORATION,

Plaintiffs,

v.

TRUSTEES OF BOSTON UNIVERSITY;
BOSTON MEDICAL CENTER
CORPORATION; BOSTON
UNIVERSITY AFFILIATED
PHYSICIANS, INC.; and BOSTON
UNIVERSITY MEDICAL CENTER
RADIOLOGISTS, INC.,

Defendants.

Civil Action No. 12-11276-GAO

DECLARATION OF BENJAMIN DEGENNARO, JR.

I, Benjamin DeGennaro, Jr., declare and state as follows:

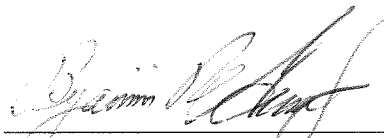
1. I am the Property Manager within the Post Award Financial Operations office at Boston University. Property Management identifies and manages all moveable capital equipment in excess of \$5,000.00 purchased or owned by the University. I make this affidavit in support of the motion by defendant Trustees of Boston University ("Boston University") and other defendants to stay this case. I base this affidavit on my personal knowledge unless otherwise stated.

2. Boston University is private, non-profit charitable institution of higher education and research. Boston University has more than 32,000 students and contains 16 colleges and

schools and a number of multi-disciplinary centers and institutes that are central to the school's research and teaching mission.

3. After reviewing records maintained by Boston University's Property Management office, I have identified three magnetic resonance imaging ("MRI") machines owned by the University. One of these machines was manufactured by Philips and is located in the Center for Biomedical Imaging. The two other machines were manufactured by Bruker Corporation.

Executed on October 3, 2012.

A handwritten signature in dark ink, appearing to read "Benjamin DeGennaro, Jr.", is written over a horizontal line.

Benjamin DeGennaro, Jr.
Property Manager
Boston University

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Civil Action No. 12-11276-GAO

AFFIDAVIT OF RONALD J. KILLIANY, PH.D.

The affiant, Ronald J. Killiany, Ph.D, being duly sworn, states:

1. I am an Associate Professor in the Department of Anatomy and Neurobiology at the Boston University School of Medicine. I am Director of the Center for Biomedical Imaging which is responsible for the Intera 3.0T Quasar Dual 32-Channel MR System (the “BU 3T MRI”) that was upgraded to a Philips Achieva system in 2009. This system is located in the basement of 650 Albany Street. As a part of the purchase/upgrade of this system by Philips Medical Systems a “Pride” workstation was installed in the Center for Biomedical Imaging. The software and hardware that are used by this scanner and workstation are overseen by Philips Medical Systems.

2. The BU 3T MRI scanner and accompanying workstation are used solely for the conduct of research. It is not licensed for clinical use and is not used to diagnose or treat patients.


3. In the course of performing research in the Center for Biomedical Imaging, I and other researchers use a variety of software packages, including the software installed as part of the BU 3T MRI workstation. Software that we routinely use that is not a part of the BU 3T workstation consists of freely available and often open source software, such as 3DSlicer (www.slicer.org), a free, open source software package for visualization and image analysis, FSL (<http://fsl.fmrib.ox.ac.uk/fsl/fslwiki/>) which is a free, open source software package of analysis tools for fMRI, MRI and DTI brain imaging data, SPM (<http://www.fil.ion.ucl.ac.uk/spm/>) which is a free, open source software package designed for the analysis of brain imaging data and DTI studio (<http://mri.kennedykrieger.org/software.html>) which is a freely available software package for the analysis of DTI data. We also had licensed versions of Brain Voyager (www.brainvoyager.com) available to users of the Center for Biomedical Imaging for use in the advanced analysis and visualization of structural and functional MRI.

4. In addition to the 3T BU MRI scanner we also have two MRI scanners from the Bruker Corporation ("Bruker MRI scanners") a 4.7T system and an 11.7T system on the Boston University School of Medicine campus. Neither of the Bruker MRI scanners has been used for diffusion tensor imaging, high-angular-resolution diffusion imaging, or q-ball. Neither of the Bruker MRI scanners are large enough for human use. Specifically, the 4.7T Bruker MRI scanner is located within the University's newly built National Emerging Infectious Diseases Laboratory, which is not yet operational, and the scanner remains de-activated. I understand

from the researcher responsible for the second Bruker MRI scanner it has not been used for diffusion tensor imaging, high-angular-resolution diffusion imaging or q-ball.

Further affiant sayeth not.

Subscribed and sworn under the penalties of perjury.



Ronald J. Killiany, Ph.D.

Date: October 8, 2012

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Civil Action No. 12-11276-GAO

DECLARATION OF ALEXANDER NORBASH

I, Alexander Norbash, declare and state as follows:

1. I am the Chief of the Department of Radiology at Boston Medical Center Corporation (“BMC”), Chairman and Professor of the Department of Radiology at Boston University School of Medicine, and the President of Boston University Medical Center Radiologists, Inc. (“BURA”). I have held this position since 2004. As such, I am responsible for the activities undertaken by the Department of Radiology at Boston Medical Center and for activities of radiologists employed by BURA. I base this affidavit on my personal knowledge unless otherwise stated.

2. BMC is a 501(c)(3) tax-exempt corporation. It is licensed as a hospital by the Department of Public Health for the Commonwealth of Massachusetts.

3. BURA is a 501(c)(3) tax-exempt corporation. It is a physician group practice affiliated with BMC and Trustees of Boston University ("BU") and employs physicians that provide clinical, teaching and research services at BMC and BU.

4. BMC currently owns three magnetic resonance imaging ("MRI") machines and two workstations manufactured by Philips. One of the Philips machines is scheduled to be deactivated in the near future. In addition to these machines, BMC previously owned an additional Philips MRI machine, but it was sold in November 2011. The MRI machines use Philips software for diffusion tensor imaging.

5. BMC has purchased two additional MRI machines from General Electric, which have not yet been delivered or used by BMC.

6. BURA does not own any magnetic resonance imaging ("MRI") machines or related software. Rather, BURA radiologists used the MRI machines owned by BMC.

7. With respect to the Philips machines, neither BMC nor BURA radiologists have ever used the machines in the clinical setting for diffusion tensor imaging ("DTI"), high-angular-resolution diffusion imaging, or q-ball. Currently, there are underway two United States Department of Defense funded research projects that use the DTI sequence on two of the Philips MRIs.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 5, 2012.



Alexander Norbash, M.D.
Chief of Department of Radiology, Boston Medical
Center, President of Boston University Medical
Center Radiologists, Inc.

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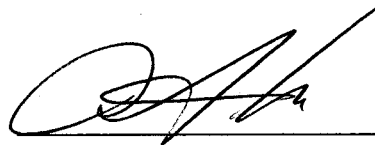
DECLARATION OF ROBERT WISE

I, ROBERT WISE, declare and state as follows:

1. I am a buyer in the Department of Finance at Boston Medical Center Corporation ("BMC"). I make this affidavit on my personal knowledge based on the business records of BMC.

2. In 2006, BMC bought a BrainLab VectorVision Transfer and Planning Station with BrainLab provided software. This equipment remains in use at BMC.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 12, 2012.



OCT 12 2012

Robert Wise

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Civil Action No. 12-11276-GAO

DECLARATION OF CHARLES TIFFT

I, Charles Tift, M.D., declare and state as follows:

1. I am a physician employed by Boston University Affiliated Physicians, Inc. I have been associated with BUAP since 12/1/2003. I make this affidavit in support of the motion by defendant Boston University Affiliated Physicians, Inc. ("BUAP") and other defendants to stay this case. I base this affidavit on my personal knowledge unless otherwise stated.

2. BUAP is a Massachusetts not for profit corporation (M.G.L. ch. 180). It received 501(c)(3) tax exempt status as of October 1, 2011.


3. ~~Today, BUAP employs eight physicians and five nurse practitioners who practice~~
internal medicine, family medicine, and/or cardiology. None of the BUAP providers are radiologists. To the extent that magnetic resonance imaging ("MRI") might be required for the

treatment of BUAP patients, the patients are referred to outside (i.e., non-BUAP) medical providers. These outside providers will then report their findings and results to BUAP providers. In making referrals for MRIs, BUAP providers do not direct the outside providers how to perform the MRI or to use or perform diffusion tensor imaging, high-angular-resolution diffusion imaging, or q-ball.

4. BUAP does not own or use, and has never owned or used, any MRI machine or related software.

5. BUAP has never performed diffusion tensor imaging, high-angular-resolution diffusion imaging, or q-ball.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 11, 2012.



Charles Tiff, M.D.
Physician